

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

(Stockton and Fresno, CA)

SCULLY DISTRIBUTION SERVICES, INC.

Employer<sup>1</sup>

and

Case 32-RC-5694

TEAMSTERS LOCAL 439,  
INTERNATIONAL  
BROTHERHOOD OF  
TEAMSTERS

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Scully Distribution Services, Inc. (the Employer), a corporation headquartered in Fontana, California, is engaged in the business of transporting products for commercial customers. Teamsters Local 439, International Brotherhood of Teamsters (the Petitioner), seeks to represent a unit composed of all drivers and hostlers employed at one of the Employer's Stockton, California locations (the Stockton Facility), excluding all other employees. The Employer takes the position that the petitioned-for single-facility unit is inappropriate because it excludes drivers at one of the Employer's Fresno, California locations (the Fresno Facility). The Employer further contends that it is inappropriate to include hostlers in the unit because they do not share a substantial community of interest with over the road drivers. A hearing officer of the Board held a hearing in this matter, the Union presented a closing argument at the hearing, and the Employer filed a post-hearing brief, which I have duly considered.

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<sup>1</sup> The name of the Employer appears as amended at the hearing.

The two issues before me are: 1) whether the single-facility unit petitioned for by the Petitioner is an appropriate bargaining unit; and 2) whether hostlers should be included in the unit of drivers. I have considered the evidence and the arguments presented by the parties on this issue, and I have concluded, in agreement with the Petitioner, that the petitioned-for single facility unit is an appropriate bargaining unit, and, furthermore, that hostlers share a sufficient community of interest with over the road drivers to be included in that unit.

### **OVERVIEW OF THE EMPLOYER'S OPERATIONS**

The Employer operates in 11 states nationwide and maintains nine facilities in its Northern California region, including three Stockton locations, two Sacramento locations, two Fresno locations, one locations in San Lorenzo, and one in San Jose. The Employer services approximately 10 accounts in Northern California and employs approximately 170 drivers among its Northern California facilities. At the Stockton and Fresno locations at issue in this proceeding, the Employer is engaged in the business of delivering grocery, produce, and perishable items to a customer base consisting mostly of supermarket chains. The Employer services two accounts out of the Stockton and Fresno Facilities, C&S Wholesale (C&S) and Foods Co. The Stockton Facility services both the C&S and Foods Co. accounts while the Fresno Facility services the C&S account only. The Employer's remaining accounts in Northern California are not grocery customers, although it has at least one other account that involves the delivery of product to supermarkets.

The Stockton and Fresno Facilities each consist of a warehouse and shipping operation. The Employer does not own either facility and is not responsible for the

warehouse operations, thus, the warehouse employees are employed by other companies. At the Stockton Facility, the Employer is responsible for the shipping operation and it staffs the operation with over-the-road drivers, hostlers, and two site managers. It also staffs the Stockton Facility with an employee who is responsible for coordinating safety training and providing administrative support to the Stockton and Fresno Facilities. At the Fresno Facility, the Employer staffs the shipping operation with over-the-road drivers and a site manager. Hostler work at the Fresno facility is performed by the warehouse staff. The Stockton and Fresno Facilities are about 120 miles apart. Each facility is responsible for a specific geographic territory: the Stockton Facility services the California Bay Area, the Sacramento Central Valley North area, and the Pacific Northwest area; and the Fresno Facility services the Fresno Central Coast and the Los Angeles areas. The Fresno Facility also provides support to the Stockton Facility.

The management hierarchy over the Stockton and Fresno Facilities starts at the top with Bryan Shaw, the Employer's Director of Northern Operations, who oversees the Employer's accounts in five states. Beneath Shaw is John Trahan, the Operations Manager for Northern California, who oversees the nine facilities in the Employer's Northern California division. Beneath Trahan at the Stockton Facility are Site Managers Darren Lopez and Tim Wallmark; and at the Fresno facility, Site Manager Gene Hammet. According to Director of Northern Operations Shaw, he visits the Stockton Facility two to three times a week and Operations Manager Trahan visits the Stockton and Fresno Facilities routinely. However, neither Shaw nor Trahan, maintain an office at the facilities, and, according to Shaw, site managers are responsible for the day-to-day

running of operations at their facilities, and directly supervise over-the-road drivers and hostlers.

Site managers do not have the authority to hire, fire, transfer, promote, layoff, or issue wage increases to employees. Decisions regarding those matters are handled by the Employer's corporate management in Fontana, who retain central control over the Employer's labor policies. Site managers recommend discipline and initiate disciplinary action plans, subject to the approval of Operations Manager Trahan in conjunction with the Employer's Human Resources Department. Site managers also conduct formal evaluations of the drivers and recommend pay increases, subject to the approval of Director of Northern Operations Shaw, Operations Manager Trahan, and Human Resources. Once those evaluations have been approved, site managers formally go over the evaluations with the drivers.

The hiring of drivers is handled through the Employer's corporate headquarters, where all reference and background checks are processed. Driver-recruits nationwide are subject to the same basic eligibility requirements and the same terms and conditions of employment, including vacations and sick leave, health insurance and retirement benefits, personnel policies, standards of conduct, and safety regulations. Those employment terms are set forth in an employee handbook that is given to all newly hired drivers nationwide. All driver personnel files are maintained at the Employer's Fontana headquarters, and payroll for all drivers is also issued from Fontana headquarters.

At the Stockton Facility, the Employer employs approximately 52 over-the-road drivers and 8 yard hostlers. At the Fresno Facility, the Employer employs 18 over the road drivers. No hostlers are employed at the Fresno facility, where hostler work is

handled by the warehouse staff. Newly hired drivers at the Stockton and Fresno Facilities are trained onsite at their respective facilities, although Stockton and Fresno drivers may receive ongoing training together. Over-the-road drivers drive 3-axle vehicles and are accordingly required to have a commercial driver's license and comply with Department of Transportation (DOT) regulations. Drivers at both facilities are required to fill out identical forms, as required by DOT regulations, on a daily basis, including a driver's vehicle inspection report and daily log. Drivers working out of the Stockton and Fresno Facilities are paid on the same wage scale, which is based on mileage with separate rates for stop pay, detention, and daily pay. Drivers at both facilities generally begin their shifts between midnight and 4 a.m.

While drivers working in the Stockton Facility do not generally perform any work at the Fresno Facility, Fresno drivers are called upon to perform work out of the Stockton Facility. Fresno drivers go to the Stockton Facility for three reasons: to perform a "back haul," which entails picking up stock from a third party location and bringing it in to replenish stock at the Stockton warehouse; to perform a transfer of inventory between the Stockton and Fresno Facilities; and to transport outbound hauls of product from the Stockton warehouse to a third party customer. Director of Northern Operations Shaw estimates that Fresno drivers haul a total average of three to five loads a day from the Stockton warehouse. During an average week, Shaw estimates that Fresno drivers transport a total of three or four backhauls to the Stockton Facility and transfer about two loads of inventory between the facilities. The majority of outbound hauls transported from the Stockton Facility by Fresno drivers are taken back into the Fresno market. Fresno drivers occasionally make deliveries to other locations when filling in for

Stockton drivers on vacation or as necessary due to surges in inventory at the Stockton Facility. On such occasions, the Fresno driver performs the same duties and functions as a driver from the Stockton Facility. Director of Operations Shaw estimated that Fresno drivers spend roughly 20 percent of their time performing work out of the Stockton Facility. While performing work out of the Stockton Facility, however, Fresno drivers continue to report to Fresno Site Manager Hammett. While the Fresno driver is working his way to the Stockton Facility, the driver continues to communicate with Hammett regarding any issues that come up. Once the driver arrives at the Stockton Facility, the driver is still under Hammett's authority but may also communicate with a Stockton site manager regarding any issues that come up. When Fresno drivers' duties require them to perform work out of the Stockton Facility, their presence at the facility is usually limited to 30 to 45 minutes. There is no evidence of permanent employee transfers between the Stockton and Fresno Facilities.

Unlike over-the-road drivers, hostlers, who do not do any highway driving, are not subject to DOT regulations and are not required to possess commercial driver's licenses. Hostlers are responsible for the movement of trailers within the warehouse yard in preparation for transport. Hostlers drive two-axle vehicles known as a "yard goats." As mentioned above, there are no hostlers at the Fresno facility. The eight Stockton hostlers report to Site Manager Lopez, who also supervises the drivers, along with Site Manager Wallmark. Hostlers receive the same benefits as over the road drivers but are paid on a different wage scale. Stockton drivers do not routinely perform hostler work, but occasionally fill in for hostlers.

## ANALYSIS

### **The Petitioned for Single-Facility Unit is Appropriate**

In making unit determinations regarding employees at single versus multilocation units, the Board has long held that a petitioned-for single-facility unit is presumptively appropriate, unless it has been so effectively merged into a more comprehensive unit, or is so functionally integrated, that it has lost its separate identity. *J&L Plate, Inc.*, 310 NLRB 429 (1993). To determine whether the presumption has been rebutted, the Board looks at such factors such as central control over daily operations and labor relations, including the extent of local autonomy; similarity of employee skills, functions, and working conditions; degree of employee interchange; distance between locations; and bargaining history, if any exists. *Id.* The presumption is in favor of petitioned-for single facility units, and the burden is on the party opposing that unit to present evidence overcoming the presumption. *Id.*; *Red Lobster*, 300 NLRB 908, 910-911 (1990); *Esco Corp.*, 298 NLRB 837, 839 (1990).

It is clear that the employees at the Stockton and Fresno Facilities possess identical skills, perform identical functions, and labor under identical working conditions, a factor which weighs against the single-facility presumption. It is also clear that Fontana management centrally controls all decisions with respect to policies, procedures, hiring, firing, discipline, wages, and employee benefits, not only for its Stockton and Fresno Facilities, but for all of its facilities nationwide. Centralized control over personnel and labor relations alone, however, is not sufficient to rebut the single-facility presumption where the evidence demonstrates sufficient autonomy at the local level. See *New Britain Transportation Co.*, 330 NLRB 397 (1999) (centralized control was not inconsistent with

a finding that sufficient local autonomy existed to support the single-facility presumption where local dispatchers and facility managers made decisions regarding scheduling and assignments, handled problems encountered by drivers along their routes, approved short-term vacation and sick leave, and carried out employer's decisions regarding formal discipline); *Esco Corp.*, 298 NLRB 837 (1990) (single-facility presumption had not been overcome where, although administrative operations and labor relations policy were centrally determined, a lead employee who was not a statutory supervisor was involved in the day-to-day direction of employees and assignment of work at the facility, and the employer relied on that employee to oversee the operation).

Here, while Fontana management retains central control over the Stockton and Fresno Facilities, it is also clear that the Stockton and Fresno Facilities each enjoy a distinct and separate level of local supervision comparable to that exercised in *New Britain Transportation* and *Esco*. In that regard, the Employer's Director of Northern Operations, Bryan Shaw, testified that the site managers in Stockton and Fresno site are responsible for the "daily running of their operation." While Northern California Operations Manager John Trahan is the ultimate decision maker for the Employer's Northern California district, the drivers report to site managers on a day-to-day basis. Moreover, the record reflects that site managers are vested with responsibilities that require more than mere routine judgment. Site managers make work assignments after evaluating factors including driver experience, length of haul, and the hours of service required by a particular job, and they are responsible for ensuring that all assigned work is completed. Site managers perform formal evaluations of employees and recommend pay increases, subject to the approval of higher management. After those evaluations



have been approved by Operations Manager Trahan in conjunction with Fontana management, site managers formally go over the evaluations with the drivers under their supervision. Site managers recommend discipline and initiate disciplinary action plans, subject to the approval of Operations Manager Trahan and Fontana management. Additionally, according to the Employer's employee handbook, employee requests for vacation and sick leave are to be approved by their direct supervisors. Operations Manager Shaw testified, furthermore, that site managers are consulted regarding layoff decisions. Accordingly, while the autonomy of site managers is limited by that retained by Operations Manager Trahan and Fontana management, I find that site managers nonetheless exercise a degree of local autonomy that is more than merely routine. I conclude, therefore, that there is sufficient local autonomy to support the single-facility presumption in this case.

By contrast, cases where the Board has found that centralized control weighs against the single-facility presumption tend to be cases where the petitioned-for facility has no separate local supervision. E.g., *Trane*, 339 NLRB 866 (2003) (finding that stand-alone facility must be included with the petitioned-for single-facility unit where the excluded facility had no separate supervisors or even leadmen); *R&D Trucking*, 327 NLRB 531 (1999) (finding insufficient local autonomy to sustain single-facility presumption where there was no local manager at the petitioned-for facility and there was no evidence that any employee had been designated as "in charge"). Here, notwithstanding frequent visits by managers Shaw and Trahan, the testimony of the Employer's own witness demonstrates that site managers are relied upon for the "daily running of their operation." Moreover, the Employer does not contend that common

supervision by Operations Manager Trahan, who is responsible not only for the two facilities at issue but all of the Employer's nine Northern California facilities, necessitates a region-wide bargaining unit. Indeed, by urging the appropriateness of a two-facility Stockton and Fresno bargaining unit, the Employer effectively concedes the appropriateness of a bargaining unit based on supervision at the site manager level.

Turning next to the issue of employee interchange, I note that volume of employee interchange in this case, estimated by the Employer to be 20 percent, is clearly significant. On the other hand, there is no evidence of permanent employee transfers between Stockton and Fresno. Additionally, the Stockton and Fresno employees receive their initial training at the facility where they are hired, although the record indicates that employees in a given region may be grouped together for ongoing training. The evidence of interchange in this case is undercut, furthermore, by the fact that the Fresno drivers remain under the authority Fresno Site Manager Hammett while performing work out of the Stockton facility. See *New Britain Transportation Co.*, 330 NLRB 397 (1999) (employee interchange did not weigh against single-facility presumption where employer failed to show, among other factors, that interchanging employees were actually supervised by the local branch). Moreover, when Fresno drivers perform work at the Stockton facility they are present at the facility for only 30 to 45 minutes and accordingly have limited interaction with the Stockton drivers, another consideration weakening the evidence of interchange in this case. See *Waste Management Northwest*, 331 NLRB 309, 310 (2000). Finally, the evidence of interchange is undercut by the Employer's failure to establish what percentage of the Fresno workforce is actually involved with performing work out of the Stockton facility. See *New Britain Transportation Co.*, 330

NLRB at 398 (single-facility presumption not rebutted where employer's interchange data is represented in aggregate form rather than as a percentage of total employees). Weighing the above considerations, I find that the evidence of employee interchange is, at most, neutral in the instant case.

I turn now to the final two factors to be considered: distance between the facilities and bargaining history. The Stockton and Fresno facilities are over 120 miles apart, a significant distance. Moreover, each facility is responsible for its own clearly demarked geographic territory. Accordingly, the geographic separation between the facilities supports the appropriateness of a single-facility unit in this case. Finally, there is no history of bargaining on either a single facility or multifacility basis, and this factor is accordingly neutral. See *Trane*, 339 NLRB at 868 fn. 4.

Balancing all of the above factors, I conclude that the appropriateness of the petitioned-for single-facility unit has not been rebutted in this case. The similarity of skills and functions among the employees weighs against the single-facility presumption in this case while the distance between the facilities supports the appropriateness of a single-facility unit. Although the Employer maintains central control over its administrative functions and labor relations, site managers also exercise a degree of limited local autonomy that supports the appropriateness of a single-facility unit. As discussed above, employee interchange, while significant in this case, is undercut by the lack of any evidence of permanent transfers, by the lack of significant contact between Stockton and Fresno drivers, by the fact that Fresno drivers remain under the supervision of Fresno Site Manager Hammett while performing Stockton work, and by the absence of evidence regarding the total percentage of Fresno employees who interchange at the

Stockton facility. Accordingly, I find that the Employer has not rebutted the strong presumption in favor of single-facility units.

**Hostlers Share a Sufficient Community of Interest with the Drivers to be Included in the Unit**

In assessing the appropriateness of any proposed unit, the Board considers community of interest factors such as employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the employees have common supervision, work sites, and other terms and conditions of employment. *P.J. Dick Contracting, Inc.*, 290 NLRB 150 (1988). No single factor has controlling weight and there are no *per se* rules about including or excluding any particular classifications of employees in a unit. *Airco, Inc.*, 273 NLRB 348 (1984). In making unit determinations, the Board's task is not to determine the most appropriate unit but simply to determine an appropriate unit. *P.J. Dick Contracting*, above. Here, for the reasons that follow, I conclude that the balance of factors establishes that the petitioned-for unit of all drivers, including hostlers, is an appropriate unit.

The degree to which the work of the hostlers is functionally integrated into the work of the drivers weighs heavily in favor of finding that they share a sufficient community of interest with over the road drivers. Thus, the record establishes that all of the hostlers duties are directly and exclusively related to the functions of the drivers. In this regard, hostlers spend all of their time supporting the drivers by transporting trailers within the yard. Hostlers and drivers are commonly supervised by Site Manager Lopez, another factor that strongly supports a community of interest with the drivers. Both drivers and hostlers are responsible for damage to the trailers they move and are required to report any safety issues they see with the trailers. Although hostlers are on a different

pay scale than drivers, hostlers receive all the same benefits as the drivers. There is some evidence of interchange between the hostlers and the drivers insofar as drivers fill in for hostlers from time to time. Each of these factors supports a community of interest between the hostlers and the drivers.

Unlike drivers, who spend most of their time outside of the facility transporting trailers, hostlers do not do any highway driving and transport trailers exclusively within the yard. Over-the-road drivers drive three-axle vehicles and are required to possess a commercial driver's license, while hostlers drive two-axle vehicles and are not required to possess a commercial driver's license. Although the Employer argues that these differences are crucial and form the basis of a separate community of interest for the hostlers precluding their inclusion in the same unit with the drivers, I find that these differences, when weighed against the other relevant factors, are not sufficient to exclude hostlers from the petitioned-for unit. The fact that two or more groups of employees engage in different functions or processes does not by itself render a combined unit inappropriate if, as here, there is otherwise a sufficient community of interest among such employees. *Berea Publishing Co.*, 140 NLRB 516, 518 (1963).

As a further consideration, I note that, if hostlers were excluded, they might become the only unrepresented employees at the facility, with the exception of the site managers and administrative staff, and would accordingly be denied the right to be represented in collective bargaining. In sum, based on the foregoing, I find that it is appropriate to include the hostlers in the same unit as the drivers.

## **CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers and hostlers employed by the Employer at its 4199 Gibraltar Court, Stockton, California facility, excluding all other employees, guards, and supervisors as defined in the Act.

There are approximately 60 employees in the unit.

## **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **Teamsters**

**Local 439, International Brotherhood of Teamsters.** The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with

them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by the Region to assist in determining an adequate showing of interest. The Region shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5224, on or before **November 5, 2009**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional office by electronic filing through the Agency's website, [www.nlr.gov](http://www.nlr.gov),<sup>2</sup> by mail, by hand or courier delivery, or by facsimile transmission at (510) 637-3315. The burden of establishing the timely filing and receipt of this list will continue to be placed on the sending party.

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<sup>2</sup> To file the eligibility list electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions.



Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

#### **Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

## RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EDT on **November 12, 2009**. The request may be filed electronically through the Agency's web site, [www.nlr.gov](http://www.nlr.gov),<sup>3</sup> but may not be filed by facsimile.

Dated: October 29, 2009

/s/ Alan B. Reichard  
Alan B. Reichard, Regional Director  
National Labor Relations Board  
Region 32  
1301 Clay Street, Suite 300N  
Oakland, CA 94612-5211

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<sup>3</sup> To file the request for review electronically, go to [www.nlr.gov](http://www.nlr.gov) and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's web site, [www.nlr.gov](http://www.nlr.gov).